has taken the English view established in *Brunsden* v. *Humphrey,* 14 Q. B. D. 141, holding that the right of person and the right of property are distinct and inherently different primary rights and that causes of action arise when these rights are violated and damage results whether the violation is caused by one or more tortious acts. The Minnesota test followed in *Ochs* v. *Ry. Co.* (supra) was adopted in that court as a rule of economy and expediency in bringing litigation to an end. The English and New York views have recognized that the rights of person and property are quite different in character as shown by the statutes of limitation affecting them and the statutes providing what causes of action shall survive and have not allowed a rule of economy to control.

RAILROADS—VIOLATION OF SPEED ORDINANCE—"LAST CLEAR CHANCE DOCTRINE."—The husband of the plaintiff was killed while employed as a freight conductor on D's railway. The decedent was run over by a fast passenger train which was exceeding the lawful speed limit, while he was standing on the main line of D's road, checking off the cars of his train lying on an adjoining side-track in the yards. The deceased knew the train was due but did not hear it or its signals because of the surrounding yard noise, and of his application in checking his train. The engineer of the passenger realized the state of affairs and tried to stop the train but was unable to do what could have been done if the speed had been legal. *Held,* that the deceased was negligent in going on the main line with a fast train expected, and with so much noise existing from the presence of many switch engines, but that his negligence was only a prior condition while D. had the "last clear chance" to avoid the accident, the proximate cause of which was the violation of the speed ordinance. *Neary* v. *Northern Pac. Ry. Co.* (1910), — Mont. —, 110 Pac. 226.

The weight of authority is to the effect that a violation of the speed rate regulated by statute or ordinance is negligence per se. *Chi. etc. Ry. Co.* v. *Mochell,* 193 Ill. 208, 86 Am. St. Rep. 318; *Schmidt* v. *Mo. Pac. Ry. Co.,* 191 Mo. 215, 3 L. R. A. (N. S.) 196; *Brown* v. *Chi. etc. R. Co.,* 109 Wis. 384; *Ga. Cent. R. Co.* v. *Tribble,* 112 Ga. 863. In the principal case this was stated to be the law of Montana. However in some jurisdictions un unlawful rate of speed is merely evidence of negligence. *Grand Trunk Ry. Co.* v. *Ives,* 144 U. S. 408; *L. S. etc. R. Co.* v. *Johnston,* 25 O. Cir. Ct. 41. The application of the "last clear chance doctrine" is not an abrogation of the contributory negligence rule, but merely affords a means of holding the defendant liable if his negligence is the proximate cause of the injury while that of the plaintiff is only a remote cause. *Richmond* v. *S. V. R. Co.,* 18 Cal. 351; *Button* v. *Hudson R. R. Co.,* 18 N. Y. 248; *Nashua, I. & S. Co.* v. *W. & N. R. Co.,* 62 N. H. 159; *Smith* v. *N. & S. R. Co.,* 114 N. C. 728. The court in the principal case points out very clearly that the negligence of the deceased was antecedent in its nature and not continuous and concurrent with that of the defendant and shows that the presence of the decedent on the main track with knowledge of a fast train about due, and of the difficulty of hearing it because of the surrounding noise was only a prior condition of affairs re-

motely connected with the accident, the proximate cause of which was the inability of the engineer to stop because of the violation of the speed ordinance.

TRUSTS—PAROL TRUSTS IN REAL ESTATE—STATUTE OF FRAUDS.—All the members of a family including the plaintiffs and defendant, intended that title to a burial lot should be taken in the name of the father, but by mistake the deed was taken in the name of the defendant. The father died without knowledge of the mistake. After his death the defendant orally agreed to hold the lot for the benefit of the plaintiffs. Later defendant claimed an absolute and unconditional title and plaintiffs thereupon brought suit to establish a trust in the lot. *Held,* under Rev. Laws, c. 147, § 1, providing that no trust in land shall be created, unless by an instrument in writing, equity could not enforce the trust against the defendant. *Tourtillotte et al.* v. *Tourtillotte et al.* (1910), — Mass. —, 91 N. E. 909.

In most of the states the English statute of frauds, providing that all declarations or creations of trusts in lands, except those implied by law, shall be manifested and proved by some writing signed by the party declaring the trust, has been re-enacted in its original or in a slightly modified form. 28 AM. & ENG. ENCY. Law, Ed. 2, 874. Under such a statute an oral promise by a grantee to hold the land in trust is unenforcible. *Pollard* v. *McKenney,* 69 Neb. 742; 101 N. W. 9; *Thompson* v. *Marley,* 102 Mich. 476, 60 N. W. 976; *Heddleston* v. *Stoner,* 128 Ia. 525, 105 N. W. 56; *Thomas Adm'r.* v. *Merry,* 113 Ind. 83, 15 N. E. 244. If, however, a person, through mistake, obtains the legal title and apparent ownership to property which in justice and good conscience belongs to another, such property is impressed with a trust in favor of the equitable owner. *Cole* v. *Fickett,* 95 Me. 265, 49 Atl. 1060; *Lamb* v. *Schiefner,* 129 App. Div. 684; 114 N. Y. Supp. 34; *Andrews* v. *Andrews,* 12 Ind. 348; *Harris* v. *Stone,* 8 Ia. 322. *Smith* v. *Walser,* 49 Mo. 250. Furthermore equity will raise a constructive trust to defeat fraud. *Rollins* v. *Mitchell,* 52 Minn. 41, 53 N. W. 1020; *Ryan* v. *Dox,* 34 N. Y. 307, 90 Am. Dec. 696; *Moore* v. *Crawford,* 130 U. S. 122. The principal case does not seem to be in accord with the weight of authority, unless the court was confined to the question whether or not the oral declarations, apart from the other circumstances in the case, were sufficient to create an enforcible trust.

WILLS—NATURE OF ESTATE—RULE IN SHELLEY'S CASE—"ISSUE."—A devise was made in the following language: "I give and devise unto my son Jacob E. Kemp the use and income for and during his lifetime of * * * (describing certain real property) and immediately after the decease of said Jacob E. Kemp, I give and devise * * * the land devised to him herein for life, to his issue in fee." Then followed a devise over in case of his death without issue. The rule in *Shelley's* case was in force. *Held,* the rule in *Shelley's* case does not apply here, since it was the intention of the testatrix to limit the estate of the first taker to one for life, and his issue do not take as heirs but are intended themselves to become the root of a new succes-